

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: Jack Dempsey Irby III)
Map 091-07-0, Parcel 209.00) Davidson County
Residential Property)
Tax Year 2005)

ORDER FINDING JURISDICTION

Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$18,000	\$66,100	\$84,100	\$21,025

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on April 21, 2006 in Nashville, Tennessee. In attendance at the hearing were Mr. Jack Dempsey Irby III, the appellant, and Davidson County Property Assessor's representative, Jason Poling.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a commercial warehouse located at 5403 Kentucky Avenue in Nashville, Tennessee.

The initial issue is whether or not the State Board of Equalization has the jurisdiction to hear the taxpayer's appeal. The law in Tennessee generally requires a taxpayer to appeal an assessment to the County Board of Equalization prior to appealing to the State Board of Equalization. Tenn. Code Ann. §§ 67-5-1401 & 67-5-1412(b). A direct appeal to the State Board of Equalization is only permitted if the assessor does not timely notify the taxpayer of a change of assessment prior to the meeting of the County Board. Tenn. Code Ann. §§ 67-5-508(b) (2) & 67-5-1412(e). Nevertheless, the legislature has also provided that:

The taxpayer shall have the **right to a hearing and determination to show reasonable** cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the [state] board shall accept such appeal from the taxpayer *up to March 1 of the year subsequent to the year in which the assessment was made.*

In analyzing and reviewing Tenn. Code Ann. § 67-5-1412(e), the Assessment Appeals Commission, in interpreting this section, has held that:

The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. It was not the intent of 'reasonable cause' provisions to waive these requirements except **where the failure to meet them is due to illness or other circumstances beyond the**

taxpayer's control. (*emphasis added*). *Associated Pipeline Contractors Inc.*, (Williamson County, Tax Year 1992), Assessment Appeals Commission, Aug. 11, 1994). See also *John Orovets*, (Cheatham County, Tax Year 1991, Assessment Appeals Commission, Dec. 3, 1993).

Thus, for the State Board of Equalization to have jurisdiction in this appeal, the taxpayer must show that circumstances beyond his control prevented him from appealing to the Davidson County Board of Equalization. It is the taxpayer's burden to prove that they are entitled to the requested relief.

It is undisputed in this case that the current appellants purchased the property on February 24, 2005. It is further undisputed that the Notice of Assessed Value Classification and Assessment was mailed on March 25, 2005 to Brenda Smith, the then owner of the property in question. It is further undisputed that Ms. Smith did not file an appeal after receiving the assessment in March, 2005 since she no longer owned the property. The current taxpayer simply states that he did not receive the notice since he did not acquire the property until after the assessment date. The question becomes whether it is too late for the current owner to perfect his appeal in order to contest the current assessment. The county board began hearing cases on June 1, 2005, with the last date to schedule appointments for hearings being June 17, 2005. The taxpayer filed his appeal with the State Board of Equalization on October 25, 2005, after realizing he had missed the deadline to the county board. The current taxpayers/appellants are the real parties in interest as it is their property that is the subject of this appeal. *Appeal of Vivian & Russ Ragsdale*, Davidson County, Tax Year 2001, Assessment Appeals Commission, Tennessee State Board of Equalization, August 13, 2003; finding reasonable cause exists in situations where notice was sent to *prior* owners, the assessment change notice did not come to the Ragsdale's attention at all. The administrative judge determined this did not make any difference and denied relief for the current taxpayers. The Commissions rationale in determining that reasonable cause exists to excuse the late appeal to the State Board hinges on:

... it is apparent that no effective notice of the new assessment was sent to those **most interested in receiving it**. This is not the fault of the assessor, of course, but it is a circumstance we cannot ignore in determining whether the taxpayer has been afforded reasonable opportunity to appeal the new assessment (*emphasis added*).

The *Ragsdale* decision was appealed to Chancery Court by the Metropolitan Government of Nashville and Davidson County (Case No. 04-1811-IV), the Assessment Appeals Commission's decision was affirmed on April 18, 2006. Therefore, the current status of the law establishes "reasonable cause" for taxpayers in the Irby's position.

ORDER

Based on the circumstances of this case and the previous ruling in *Ragsdale* by the State Board of Equalization, the administrative judge finds that "reasonable cause" exists for the taxpayer's failure to file before the county board. An order will be sent setting this matter for a further hearing on the issue of value.

ENTERED this 17th day of May, 2006.



ANDREI ELLEN LEE
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Jack D. Irby III
Jo Ann North, Assessor of Property